



Federal Communications Commission
Washington, D.C. 20554

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SENT VIA ELECTRONIC MAIL

TV-49, Inc.
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Re: PSIP Standard Waiver Request for Station:
WJFB, Lebanon, Tennessee
Facility ID No. 7651

Dear Counsel:

This is with respect to the above-referenced facility's request for waiver¹ of ATSC A/65C ("ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006") (PSIP Standard).² TV-49, Inc. (TV-49), is the current licensee of station WJFB (Station) and authorized to operate on RF channel 25 in Lebanon, Tennessee. TV-49 requests that the Commission waive the PSIP Standard to allow the Station to continue to operate on virtual channel 44. For the reasons set forth below, we will waive the Standard as requested.

Background. The PSIP Standard states, "[f]or broadcasters with existing NTSC licenses, the major channel number for the existing NTSC channels, as well as the digital virtual channels, controlled by the broadcaster, shall be set to the NTSC RF channel number."³ Here, pursuant to the PSIP Standard, the Station was required to use virtual channel 66, as its NTSC licensed operations were on RF channel 66.⁴

On November 11, 2020, TV-49 acquired the license for WJFB, which was using virtual channel 44, the digital RF channel number which the Station was originally assigned.⁵ TV-49 explains in its Waiver Request that after it acquired the Station, it discovered that the Station had been using virtual

¹ Petition for Waiver and Request for Reassignment of PSIP Channel Designation, Letter from Matthew S. DelNero, Esq. to Marlene S. Dortch, Secretary, FCC, dated Feb. 8, 2021 (Waiver Request).

² See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Report and Order, 19 FCC Rcd 18279, 18343-46, paras. 149-152 (2004) (*Second Periodic Review*); 47 CFR § 73.682(d).

³ ATSC A/65C, Annex B, at Section B.1.1.

⁴ See CDBS FCC File No. BLCT-19951121KN. When the Commission adopted the PSIP Standard into its broadcast transmission rules in 2004, it explained that the Standard allowed viewers to receive a station's digital signal, which was on an RF channel differing from its analog, or NTSC, RF channel, even if viewers did not know the digital channel number, simply by tuning to the analog channel number. See, generally, *Request for Declaratory Ruling by Meredith Corporation and "Alternative PSIP Proposal" by PMCM TV, LLC for WJLP (formerly KVVV(TV)), Middletown Township, New Jersey*, MB Docket No. 14-150, Declaratory Ruling, 30 FCC Rcd 6078 (MB 2015), *aff'd*, 32 FCC Rcd 7229 (2017) (*PSIP Order*), subsequent citations omitted.

⁵ See 47 CFR § 73.622(d), (i). Station records in the Commission's Licensing Management System (LMS) indicate that the Station was assigned to virtual channel 66.

channel 44 continuously since at least the end of the DTV transition in 2009.⁶ Thus, television viewers in the Nashville Designated Market Area (DMA) have been receiving the Station's programming on virtual channel 44 since the completion of the digital television transition, and TV-49 states that the Station has invested substantial resources associating its programming with virtual Channel 44 and that a virtual channel reassignment would result in a significant loss of brand recognition.⁷

TV-49 maintains it has a "unique situation" which warrants waiver of section 73.682(d) of the Commission's rules (rules) as contemplated in the *Second Periodic Review*.⁸ To ensure that television viewers in the Nashville DMA continue to receive the Station's programming on its current channel, TV-49 requests a waiver of the PSIP Standard and assignment of virtual channel 44 to avoid any possible disruption among viewers that wish to continue accessing the Station's programming.

Discussion. In the *Second Periodic Review*, the Commission stated "[t]o the extent broadcasters have a unique situation that is not provided for in PSIP, the Commission may grant exceptions on a case-by-case basis."⁹ Considering the unique circumstances and recognizing the PSIP standard was instituted to avoid viewer confusion while promoting programming channel number identification,¹⁰ the Division finds that TV-49 presents a "unique situation" that is not provided for in the PSIP Standard.

The instant request is distinctive as TV-49 has demonstrated a special circumstance and deviation from the PSIP Standard would benefit the public interest. Grant of the request would maintain the Station's virtual channel which the Station has been using for over ten years, thereby preserving the viewers' established expectation of channel 44 programming, and preventing viewer confusion that would result from a virtual channel reassignment in the Nashville DMA. Additionally, based upon TV-49's showing and the Commission's own studies, continued utilization of virtual channel 44 would not conflict or duplicate any other station's virtual channel assignment and as such would not harm any incumbent licensees. We also note that no prospective new stations could be affected by the Station's continued use of virtual channel 44, since RF channel 44 is no longer available for use by full power television stations.¹¹ Absent the requested waiver, television viewers in the Nashville DMA would need to rescan their television sets in order to find the Station's programming at a new channel position. This would cause significant inconvenience and hardship to viewers, without any offsetting benefit that would accrue from enforcement of the rule if another station with an overlapping signal contour were using the same

⁶ Waiver Request at 1. As noted above, TV-49 recently acquired the Station from HC2 Station Group, Inc. (CDBS File No. BALCDT-2020911AAC). Prior to that, the Station changed hands several times, after the principal of the entity that held the Station license at the end of the DTV transition died in 2011 (CDBS File Nos. BTCCDT-20120202ABS; BALCDT-20170307 AAI; BALCDT-20180805ABI).

⁷ Waiver Request at 2.

⁸ *Id.*

⁹ *Second Periodic Review*, 19 FCC Rcd at 18346, para. 153.

¹⁰ *Id.* at 18343, para. 149.

¹¹ On April 13, 2017, the Commission completed the incentive auction and broadcast television spectrum repacking authorized by the Spectrum Act. *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, §§ 6402 (codified at 47 U.S.C. § 309(j)(8)(G)), 6403 (codified at 47 U.S.C. § 1452), 126 Stat. 156 (2012) (Spectrum Act); *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, GN Docket No. 12-268, Public Notice, 32 FCC Rcd 2786 (2017). In that proceeding, the Commission reallocated the spectrum associated with television channels 39 through 51 to flexible uses, including broadband, and auctioned the spectrum to new users.

virtual channel. Thus, we agree that a waiver request of ATSC A/65C is warranted and good cause exists for the assignment of virtual channel 44 to station WJFB.¹²

Accordingly, **IT IS ORDERED** that the request for waiver of ATSC A/65C, the PSIP Standard, as incorporated in the Commission's rules, filed by TV-49, Inc., to operate station WJFB, Facility ID No. 7641, using virtual channel 44 **IS GRANTED**.

Sincerely,

/s/

Barbara Kreisman
Chief, Video Division
Media Bureau

¹² Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C § 503(b)(1)(B), a person who is found to have willfully and/or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty. Section 312(f)(1) of the Act, 47 U.S.C §312(f)(1) defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. Because TV-49 promptly requested a waiver of the PSIP Standard and rules following consummation of the assignment, we determine that, no enforcement action is required. *Ernesto Bustos*, 29 FCC Rcd 1898 (MB 2014) (“The Commission has long held that assignments from one independent entity to another break the chain of liability for violations that occurred under the previous licensee.”).